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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,312	07/10/2003	Scott Svend Hendron		3583
7590	12/30/2003		EXAMINER	
Scott S. Hendron 1684 Geraldine Drive Dubuque, IA 52003			CEGIELNIK, URSZULA M	
			ART UNIT	PAPER NUMBER
			3712	

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/617,312	HENDRON, SCOTT SVEND
	Examiner Urszula M Cegielnik	Art Unit 3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,5-7,16,17,19 and 20 is/are rejected.
- 7) Claim(s) 2-4, 8-15, and 18 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) Interview Summary (PTO-413) Paper No(s) _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

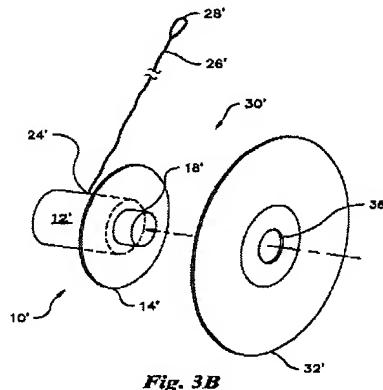
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by

Holenstein et al.



Holenstein et al. disclose a top spindle for use with a single or plurality of rotational inertia members (32') comprised of compact disc media storage disks to form a toy top assembly, said top spindle having a spindle axis, said rotational inertia member comprising a rigid disk having a mounting hub flange (the portion proximate reference numeral 36') of a predetermined thickness and a central opening hole (36') having a predetermined diameter, said compact disc providing

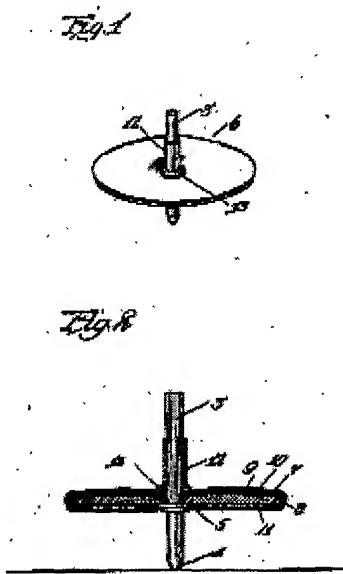
means for electronically recording, storing or playing back audio, video, textual, computer code, gaming software or other mediums in digital form (col. 1, lines 16-21) as claimed in claim 1;

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-7, 16, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidenreich in view of Holenstein et al.



Heidenreich disclose a top spindle for use with a single or plurality of rotational inertia members comprised of disks to form a toy top assembly, said

top spindle having a spindle axis, said rotational inertia member comprising a rigid disk having a mounting hub flange of a predetermined thickness and a central opening hole having a predetermined diameter as claimed in claim 1; a toy top assembly having a gripping stem having a gripping stem axis concentric with said toy top assembly spinning axis, and c) a spinning tip having a spinning tip axis concentric with said toy top assembly spinning axis as recited in claim 6.

Heidenreich does not disclose the disc being a compact disc as claimed in claim 1; compact disc type media storage disks, said compact discs providing means for electronically recording, storing or playing back audio, video, textual, computer code, gaming software or other mediums in digital form, said rotational inertia member having a prescribed mounting hub flange thickness and a central opening hole, said rotational inertia member hub flange clamped between said shoulder pair as claimed in claim 16; said rotational inertia member includes a single or plurality of labels on which printed matter exists, said printed matter selected from the group consisting of images, patterns, pictures, logos, shapes, colors and text, said label fixedly attached to a planar surface of said rotational inertia member as claimed in claims 5, 7, and 17; a compact disc type media storage disk, the compact disc comprised of a rigid disk having a mounting hub flange of predetermined diameter, the compact disc providing means for electronically recording, storing or playing back audio, video, textual, computer code, gaming software or other mediums in digital form, the compact disc providing means to form the rotational the rotational inertia member in the toy top assembly as recited in claim 6; said shoulder pair is selected from the group

consisting of flange, nut, threaded boss, o-ring and spacer as recited in claim 19; means to align the rotational inertia member central opening hole with spindle axis, the alignment means selected from the group consisting of hub, washer, flanged boss, and o-ring, the alignment means having a minimum external diameter less than or equal to the rotation inertia member central opening hole as claimed in claim 20.

Holenstein et al. teaches a spinning toy having compact disc type media storage disks, said compact discs providing means for electronically recording, storing or playing back audio, video, textual, computer code, gaming software or other mediums in digital form, said rotational inertia member having a prescribed mounting hub flange thickness and a central opening hole, said rotational inertia member hub flange clamped between said shoulder pair as claimed in claim 16; said rotational inertia member includes a single or plurality of labels on which printed matter exists, said printed matter selected from the group consisting of images, patterns, pictures, logos, shapes, colors and text, said label fixedly attached to a planar surface of said rotational inertia member (col. 1, lines 16-21 and col. 4, lines 40-45) as claimed in claims 5, 7, and 17.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the disc of Heidenreich with a compact disc as taught by Holenstein et al., since Holenstein et al. states at col. 1, lines 19-21 that such a modification would allow compact discs received in the mail or with purchased products to be made useful.

Allowable Subject Matter

Claim 2-4, 8-15, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-306-5806. The examiner can normally be reached on Monday through Friday, from 6:45AM - 3:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 703-308-1745. **The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for both regular and After Final communications.**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at 703-306-5648.

Urszula M. Cegielnik
Assistant Examiner
Art Unit 3712



DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700